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REFER TO OUR FILE #: 73028

April 23, 2008

Hon. Richard M. Berman
United States Courthouse
500 Pearl Street, Room 640
New York, NY 10007

MEMO ENDORSED

Re: Perez vs. Amore, et al.
08-CV-2375 (RMB)

Honorable Sir:

*Counsel should meet + confer + work
this out. Failing that, Refs' should
respond w. the 2-3 pg letter by 4/28
④ 4:00 P.M. Conference on 4/29/08
④ 9:15 A.M.*

SO ORDERED:

Date: 4/24/08

Richard M. Berman
Richard M. Berman, U.S.DJ.

This letter is written to respectfully request that the Court either grant plaintiff's motion to extend the time to serve defendant Gaetano Amore and to permit service upon the defense firm in this matter, or that Your Honor schedule a further conference to address the plaintiff's application. Pursuant to Your Honor's endorsement of April 11, 2008, this motion was denied without prejudice. Although it appears that Your Honor contemplated discussing this issue at the time of the April 21, 2008, it seems that, due to other issues being brought before the Court, plaintiff's motion was not addressed. In the interim since the conference, we have learned that Supreme Court Justice Howard H. Sherman granted the state court motion on April 14, 2008. A copy of the Order is enclosed. While we realize that this Order was issued after the removal of this case to federal court, we believe it is germane, in that shows how the state court would have ruled had the matter not been removed.

It has been brought to my attention by my colleague Mr. Finkelstein that defense counsel is of the opinion that plaintiff's motion was not timely made, based on the date the motion was filed. However, pursuant to CPLR 2211, "A motion on notice is made when a notice of the motion is served." This motion was served on February 1, 2008, and thus was timely. Further, we wish to note that the motion was unopposed. Since the statute of limitations has passed, we respectfully implore the Court to grant the relief sought in the motion. We believe we have made diligent efforts to locate the defendant driver to no avail. The denial of the motion is highly prejudicial to the plaintiff in light of the fact that certain defendants will likely be let out of the case based on the Federal Transportation Act (49 USC Sec. 30106).

Accordingly, we respectfully request that Your Honor either grant the motion, or schedule a further conference to permit the plaintiff to be heard on this issue.

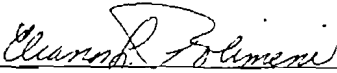


Hon. Richard Berman
April 23, 2008
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Thank you for your consideration in this matter.

Very truly yours,

JACOBY & MEYERS, LLP

BY: 
ELEANOR L. POLIMENI, ESQ. of
FINKELSTEIN & PARTNERS, LLP
Of Counsel

Encl.
cc w/encl.: White Fleischner & Fino, LLP

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

JOSE PEREZ and ROSA PEREZ,

Plaintiffs,

-against-

GAETANO AMORE, FREEDOM RENTAL, FREEDOM
RENT A CAR, ROSEDALE DODGE, INC. and
BERGEN RENT A CAR, L.L.C.,

Defendants.

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

Index No.: 301602/07

DECISION/ORDER

Present:

Hon. Howard H. Sherman
JusticeRECEIVED
BRONX COUNTY CLERK'S OFFICE

APR 14 2008

The following papers numbered 1 read on this motion to extend time noticed on
February 29, 2008 and duly submitted on the Motion Calendar of that date.

	PAPERS NUMBERED	
Notice of Motion- Exhibits [A-F] and Affidavits Annexed:	1	

Upon the foregoing papers this motion by plaintiffs for an order extending the time in which to serve defendant Gaetano Amore pursuant to CPLR § 306-b and for an order pursuant to CPLR § 308(5) directing the manner of service to the summons and complaint upon defendant Amore, submitted without opposition, is granted as set forth below.

Plaintiff Jose Perez is seeking damages for personal injuries allegedly sustained in a motor vehicle accident that occurred on December 27, 2004 on White Plains Road and Pelham Parkway in Bronx County. [Plaintiff Rosa Perez interposes a derivative claim]. Jose Perez was the driver of one automobile and Gaetano Amore was the other driver in the two-car collision.

This action was commenced in October 2007 and issue was joined with service of defendants' answer in January 2008. Among the fourteen affirmative defenses raised was lack of personal jurisdiction.

Plaintiff's motion seeks an extension of time in which to serve the individual defendant as attempts to effect service upon him at the address designated on the police

report (MV-104) of the accident, have proven unsuccessful. Plaintiffs seek leave to serve the defendant through either his attorney or the insurer of the motor vehicle.

The moving papers establish reasonably diligent efforts to make timely service as defendant at the address on the police report, with both the USPS check and the process server's actual attempt revealed that defendant was unknown at the industrial location. Accordingly, plaintiffs have shown sufficient good cause for relief pursuant to CPLR § 306-b.

In addition, plaintiffs have established a basis for resort to CPLR 308(5) service at the only address provided by the defendant driver, appears unavailing. It is to be noted that the motor vehicle defendant was driving at the time of the accident appears to have had a "DPL" license plate.

Accordingly, it is


ORDERED that the plaintiffs' motion be and hereby is granted in its entirety and it is

FURTHER ORDERED that upon good cause shown and there being no opposition thereto, that the time in which to serve the defendant GAETANO AMORE be and hereby is extended for a period of thirty (30) days from the date of this order and it is

FURTHER ORDERED that sufficient cause appearing, and no opposition thereto, personal service upon White, Fleischer & Fino, LLP, 61 Broadway, 18th floor, New York, New York 10006 on or before thirty (30) days from the date of this order be deemed good and sufficient service.

This constitutes the decision and order of this court.

Dated: April 3, 2008
Bronx, New York


Hon. Howard H. Sherman
J.S.C.

RECEIVED
BRONX COUNTY CLERK'S OFFICE

APR 14 2008

PAD — NO FEE